

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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WILLIAM DURLING, JAMES MORTON, JR.,	:	
TOM WOLFF, MICHAEL MORRIS, and	:	
RICHARD SOBOL, for themselves and all	:	Case No. 7:16 Civ. 03592
others similarly situated,	:	
	:	Class/Collective Action
Plaintiff,	:	
	:	
- against -	:	
	:	
PAPA JOHN'S INTERNATIONAL, INC.,	:	
	:	
Defendant.	:	
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OPT-IN DISCOVERY STIPULATION

This stipulation is entered into as of November 27, 2018, among Plaintiffs and Defendant Papa John's International, Inc. ("Defendant") (collectively, the "Parties").

WHEREAS, on July 30, 2018, the Court entered an Order directing the Parties to submit a proposed schedule to the Court within 10 days after the close of the opt-in period regarding the scope of fact discovery related to opt-in plaintiffs and relevant deadlines.

WHEREAS, the opt-in period concluded on October 27, 2018;

WHEREAS, the Court extended the Parties' deadline to submit a proposed schedule to November 27, 2018;

WHEREAS, the Parties have conferred regarding an opt-in discovery plan and have reached an agreement on the plan set forth in this stipulation;

NOW, THEREFORE, IT IS AGREED as follows:

A. Discovery of the Named Parties

1. Defendant may propound written discovery on and depose named Plaintiffs who are, or in the future may be, identified in Plaintiffs' operative complaint. Such discovery will proceed under the Federal Rules of Civil Procedure and the Local Rules of this Court unless otherwise ordered by the Court.

B. Depositions and Written Discovery of Opt-In Plaintiffs

The limitation on the number of depositions set forth in Federal Rule 30(a)(2) shall not apply to Opt-In discovery for this matter, and individuals subject to deposition may be selected through the methods described below.

1. The parties agree that the undersigned counsel for Plaintiffs shall send a discovery questionnaire, attached hereto as Exhibit A, by mail and / or email to opt-in Plaintiffs.

2. Plaintiffs will produce responses by all opt-in Plaintiffs who provide responses to the discovery questionnaire to Defendant's counsel.

3. Plaintiffs will produce a minimum response rate equal to 10% of the total number of opt-in Plaintiffs.

4. Except as set forth herein, Federal Rules of Civil Procedure 33 and 34 shall govern the written discovery and the depositions to which the Opt-In Plaintiffs are subject.

5. *The parties agree that Defendant may depose up to 75 of the Opt-In Plaintiffs.*

Additionally, Plaintiff may offer another 10 deponents.

6. Depositions may take place by telephone or videoconference, but the Opt-In Plaintiff shall sit for deposition in the jurisdiction in which he or she resides, unless otherwise

agreed. The parties will work together cooperatively to group depositions, promote convenience, and eliminate repeat travel to the same or proximate locations.

7. Time Limits On Depositions

- a. The parties agree that depositions of Opt-In Plaintiffs will be limited to three (3) hours of testimony, but that either party may seek leave to obtain additional time in accordance with the provisions of Rule 30.
- b. Notwithstanding this time limitation, Defendant may conduct up to ten depositions that include up to seven (7) hours of testimony, with all experts and trial witnesses also being separately subject to depositions, to the extent not already deposed.
- c. Plaintiffs may conduct up to ten rebuttal depositions that include up to seven (7) hours of testimony, with all experts and trial witnesses also being separately subject to depositions, to the extent not already deposed. Plaintiffs' rebuttal depositions do not constitute a reopening of fact discovery, and to the extent Plaintiffs seek to depose individuals beyond store-level managers who worked at the same store where an Opt-In Plaintiff deponent worked, Defendant reserves its right to oppose the deposition and seek a protective order.

C. Limitations on Use of Evidence

1. Any discovery propounded by Plaintiff that seeks documents or information relating to individual Opt-In Plaintiffs shall be strictly limited only to documents or information concerning the Opt-In Plaintiffs who have returned a questionnaire and/or are subject to deposition. Notwithstanding this provision, Plaintiffs' prior requests for data relating to the delivery driver population are not affected by this discovery plan.

2. The parties may not present testimony, including declaration testimony, from Opt-In Plaintiffs beyond those Opt-In Plaintiffs who have returned a questionnaire and/or are subject to deposition.

3. The parties must produce any deposition exhibits at least ten (10) days prior to use of such exhibits in a deposition, with the exception of documents produced by the individual Opt-in Plaintiffs (i.e., the Opt-In's questionnaire and documents produced in connection with it).

4. The parties agree that Defendant shall have the right to seek dismissal of the claims of any Opt-In Plaintiff who refuses or fails to participate in discovery for any reason. Plaintiffs reserve all rights to oppose such dismissal based on the principles of representative discovery, the appropriate scope of opt-in discovery, and any other applicable grounds.

D. Other Discovery Matters

1. Opt-In discovery as described under this plan shall close within 210 days from the date on which the questionnaire is distributed to the Opt-In Plaintiffs.

2. Opt-In Plaintiffs shall have 60 days to return a completed and verified questionnaire.

3. Nothing in this discovery plan shall affect deadlines for expert discovery or briefing on Plaintiffs' Rule 23 Motion for Class Certification, both of which will be addressed in a separate proposal pursuant to the Court's Order. (ECF No. 386.)

4. Nothing in this discovery plan shall foreclose the parties from seeking protection from discovery pursuant to the Federal Rules of Civil Procedure and the Local Rules.

5. Nothing in this discovery plan shall foreclose the parties from seeking discovery regarding Opt-Ins subject to discovery from any non-party pursuant to the Federal Rules of Civil Procedure and the Local Rules, except that the scope of such discovery must be limited in accordance with the terms of this plan.

6. Nothing in this discovery plan shall be construed as an admission or concession that this matter or any issues relevant to this matter can be or shall be resolved or decided through the use of representative testimony, or that this matter may be tried on a representative basis.

7. This discovery plan may be amended by agreement of the Parties, or by Court order.

DATED: November 27, 2018

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Attorneys for Plaintiffs

SO ORDERED on this 30th day of November, 2018



JUDITH C. McCARTHY
United States Magistrate Judge